No. 83-1021

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Appellant,

v.

ALLSTATE INSURANCE COMPANY,
Appellee.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI

MOTION TO AFFIRM

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ALLSTATE INSURANCE COMPANY'S PARENT, AFFILIATES AND SUBSIDIARIES

Defendant-appellee Allstate Insurance Company's parent corporation is Sears, Roebuck and Co. Allstate's affiliates and subsidiaries (except for its wholly-owned subsidiaries, the wholly-owned subsidiaries of Sears, Roebuck and Co. and the wholly-owned subsidiaries of their subsidiaries and wholly-owned subsidiaries) are Allstate Insurance Company of Canada; Allstate Life Insurance Company of Canada; The Armstrong Rubber Company; Copolymer Rubber and Chemical Corporation; DeSoto Inc.; Kellwood Company; Roper Corporation; Sears, Roebuck de Mexico, S.A. de C.V.; Simpson-Sears Limited; Inglis Limited; Simpson-Sears Acceptance Co., Ltd.; Simpson-Sears Properties Ltd.; and Universal-Rundle Corp. "Affiliates" listed above are those which Allstate included as of December 31, 1982 in Item 2 of the Registration Statement which Allstate is required to file in its domiciliary state to comply with the Insurance Holding Company Systems Act, Ill. Ann. Stat., Ch. 73, § 743.1 *et seq.* Affiliates whose assets are not greater than one-half (1/2) of 1% of Allstate's assets are not included in Item 2 of the Registration Statement. An Investment Schedule listing affiliates whose assets are less than one-half of 1% of Allstate's assets is available upon request.

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ON APPEAL FROM THE
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MOTION TO AFFIRM

Pursuant to Rule 16 of the Rules of this Court, appellee Allstate Insurance Company moves that this Court exercise its jurisdiction and affirm the judgment of the District Court on the ground that the question presented is so unsubstantial as not to warrant further argument.

QUESTIONS PRESENTED

1. Whether this Court's jurisdiction under 28 U.S.C. 1252 is properly invoked where the Equal Employment Opportunity Commission seeks review of the invalidation of its Equal Pay

Act enforcement authority which necessarily followed from the decision below that the Reorganization Act of 1977 is unconstitutional.

2. Whether the unconstitutionality of the Reorganization Act of 1977 invalidates the transfer of Equal Pay Act enforcement authority to the Equal Employment Opportunity Commission effected pursuant to the Reorganization Act.

STATEMENT

The Equal Employment Opportunity Commission ("EEOC") brought this action against Allstate Insurance Company ("Allstate") seeking to enforce Section 6(d) of the Fair Labor Standards Act, 29 U. S. C. 206(d), commonly known as the Equal Pay Act. When the Equal Pay Act was enacted in 1963 (Pub. L. No. 88-38, 77 Stat. 56), authority for its enforcement was vested in the Secretary of Labor. Reorganization Plan No. 1 of 1978 (92 Stat. 3781), promulgated pursuant to the Reorganization Act of 1977, 5 U. S. C. 906, purported to transfer that authority from the Secretary of Labor to the EEOC.

An integral component of the Reorganization Act was a one-house legislative veto provision virtually identical to that held unconstitutional in *Immigration and Naturalization Service* v. *Chadha*, ____ U. S. ____, 51 U. S. L. W. 4907 (June 23, 1983). Since the EEOC's authority in the instant case had been derived from such unconstitutional legislation, Allstate moved for summary judgment. On August 19, 1983, the District Court granted that motion holding the Reorganization Act unconstitutional in its entirety and concluding that the EEOC "has no authority to act as Plaintiff in this cause" or otherwise enforce the Equal Pay Act. J.S. App. 19a. The EEOC then filed a timely notice of appeal to this Court invoking this Court's

jurisdiction under 28 U. S. C. 1252. Thereafter, the EEOC also filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit.[1]

[1] On November 23, 1983, Allstate filed a motion to dismiss the EEOC's Fifth Circuit appeal on the ground that the courts of appeals are divested of 28 U. S. C. 1291 jurisdiction in cases, such as the instant case, where direct review may be had in this Court pursuant to 28 U. S. C. 1252. The EEOC filed its opposition to the motion to dismiss on December 5, 1983. On January 9, 1984, the Fifth Circuit denied Allstate's motion to dismiss; however, that court ordered the appeal before it stayed pending this Court's resolution of the jurisdictional question. *EEOC* v. *Allstate*, appeal pending, No. 83-4652 (5th Cir.).

ARGUMENT

THIS COURT HAS JURISDICTION UNDER 28 U. S. C. 1252

Section 1252 provides for direct review by the Supreme Court of an "interlocutory or final judgment, decree or order of any court of the United States" in a "civil action, suit or proceeding" to which an agency of the United States is a party where the decision holds an Act of Congress unconstitutional. Each of these prerequisites has been satisfied in the instant case. The judgment appealed from is a final order of a United States District Court in a civil action; the action was brought by an agency of the United States, the EEOC; and the District Court's judgment held the Reorganization Act of 1977, an Act of Congress, unconstitutional.

The EEOC nonetheless contends that, for the same reasons the government has advanced in *Heckler* v. *Edwards,* No. 82-874 (argued Nov. 30, 1983), its appeal lies in the court of appeals rather than this Court. J.S. 6. The jurisdictional issue in this case, however, differs significantly from that in *Edwards.* The EEOC is incorrect, therefore, in contending (J.S. 8) that *Edwards* is controlling, and the instant appeal properly lies in this Court.

In *Edwards,* the government had conceded every question involving constitutionality; as a result, it argued that no direct appeal was required because the lower court's constitutional holding was not "subject to review and possible reversal on appeal." Brief for the Government in *Edwards* ("Govt. Br."), at 27, 35. In the present case, in contrast to *Edwards* (Govt. Br. 6), the government continues to "defend the constitutionality" of the Reorganization Act. As a result, contrary to the assertion of the EEOC (J.S. 7), this dispute involves far more than merely the relief ordered by the District Court. The court below concluded, correctly as appellee will demonstrate *infra,* that the one-house veto provision was "an integral and inseparable part of the entire [Reorganization] Act" and that,

accordingly, "the entire Act must be held unconstitutional . . . ." J.S. App. 13a-14a. Nonetheless, in its jurisdictional statement, the EEOC argues that, although the legislative veto provision in the Act is unconstitutional, that provision is severable and thus does not affect the constitutionality of the Act as a whole. J.S. 9-10, n. 5. The critical controversy here continues to be the very question which the government has argued is no longer at issue in *Edwards*: "the binding effect of the constitutional holding on the Executive Branch's administration of the law." Govt. Br. 12.

Moreover, unlike *Edwards*, where the government had conceded unconstitutionality in an action that would affect "the nationwide administration of the law" (Govt. Br. 31-32), the EEOC has continued to assert its "authority" to lawfully enforce the Equal Pay Act, as well as to administer the Age Discrimination in Employment Act ("ADEA")[2] and perform all of the other functions transferred to that agency by the Reorganization Act. J.S. 3, n. 2. This distinction is also crucial. The purpose of 28 U. S. C. 1252 is admittedly "to assure an expeditious means of removing the restraint on the federal government's administration of the law when it would be bound by a holding that the law in question is unconstitutional. . . ." Govt. Br. 21. In this case, direct review by this Court is the only means to effectuate that goal and obtain a ruling of nationwide effect as to whether the con-

[2] See, *e.g.*, *Muller Optical Co.* v. *EEOC*, No. 83-2836 (W. D. Tenn. Nov. 10, 1983), appeal pending No. 83-5889 (6th Cir.); *EEOC* v. *Pan American World Airways*, No. M18-304 (S. D. N. Y. Oct. 26, 1983); *EEOC* v. *Michigan Wisconsin Pipeline*, CA No. CV 82-0626 (W. D. La., Nov. 29, 1983). Indeed, as of January 4, 1984, challenges to the EEOC's enforcement authority had been raised in 67 separate lawsuits: 26 Equal Pay Act cases and 41 ADEA cases. It is clear, therefore, as the EEOC has stated to the Fifth Circuit in this case, "the uncertainty created by the decision below is causing long and damaging delays in the enforcement of two important federal civil rights statutes." EEOC Opposition to Appellee's Motion to Hold Briefing in Abeyance at 3-4.

stitutional restraint that has been imposed on the EEOC's administration of the Equal Pay Act is appropriate. There is no reason, therefore, to hold this case pending the resolution of *Edwards*. Regardless of the disposition of that matter, here the "purpose of § 1252 is too plain to allow circumvention." *McLucas* v. *DeChamplain*, 421 U. S. 21, 31 (1975).[3]

THE QUESTION RAISED BY THIS APPEAL IS NOT SUBSTANTIAL AND SUMMARY AFFIRMANCE THEREFORE IS APPROPRIATE

The substantive question presented by this appeal is whether the District Court correctly concluded that the unconstitutionality of the Reorganization Act of 1977 nullifies the transfer of Equal Pay Act enforcement authority to the EEOC pursuant to that Act. The decision below is plainly correct, rests on well-settled legal principles, and does not present any substantial question requiring this Court's plenary consideration.

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[3] *Montana Contractors' Association* v. *Kreps*, 442 U. S. 935 (1979), the primary authority relied upon by the government in *Edwards* (Govt. Br. at 15-17), further illustrates the difference between that case and the present dispute. This Court properly dismissed that appeal for want of jurisdiction because no constitutional issue was presented for review. The Montana Contractors' Association did not appeal from the district court decision holding the minority business enterprise set-aside provision unconstitutional, *Montana Contractors' Association* v. *Secretary of Commerce*, 460 F. Supp. 1174 (D. Mont. 1978). Instead, it appealed from a later court order denying the Association's prayer for injunctive relief. See *Montana Contractors' Association* v. *Kreps*, 442 U. S. 935 (1979), Juris. Statement, Appendices C, J. The appeal in that case, therefore, clearly failed to satisfy the requirement of 28 U. S. C. 1252 that the appeal be from an order "holding an Act of Congress unconstitutional." In the instant case, by contrast, direct review under 28 U. S. C. 1252 is proper because this appeal has been taken from a district court judgment that the Reorganization Act of 1977 is unconstitutional in its entirety.

1. As the EEOC now admits, the District Court correctly concluded that under this Court's decision in *Chadha,* the legislative veto provision of the Reorganization Act is unconstitutional. The general presumption is, of course, that where, as here, there is no severability clause, "the Legislature intends an act to be effective as an entirety—that is to say, the rule is against the mutilation of a statute; and if any provision be unconstitutional, the presumption is that the remaining provisions fall with it." *Carter* v. *Carter Coal Co.,* 298 U. S. 238, 312 (1936). In addition, it is evident in this case "that the legislature would not have enacted those provisions which are within its powers, independently of that which is not." *Chadha,* 51 U. S. L. W. 4911. The legislative history of the Reorganization Act was carefully reviewed by the District Court. J.S. App., 10a-14a. That history demonstrates that "a major objective of the sponsors" was to provide Congress with a "considerable degree of participation in the reorganization process."[4] And, despite substantial awareness of the doubtful constitutionality of the one-house legislative veto provision (J.S. App. 10a) Congress rejected a modified severability amendment[5] so that

[4] H. R. Rep. No. 95-105, 95th Cong., 1st. Sess., reprinted in 1977 U. S. Code Cong. & Ad. News 41-63, at 42, 48, 56. See also, *e.g.,* the remarks of Congressman Drinan that the "one house veto provision is deemed to be an integral and necessary part of the legislative scheme for reorganization. That is a proposition to which all agree" (1977 U. S. Code Cong. & Ad. News 69); Congressman Kazen, one of the bill's original co-sponsors, who stressed that "some degree of participation" was being retained by Congress and that the legislative veto was "an important and meaningful provision" to allow Congress not to "forfeit its constitutional role on the question of reorganization" (123 Cong. Rec. 9345 (Mar. 29, 1977)); and Congressman Fascell, who similarly stressed the retention of "substantial congressional control over reorganization" afforded by the legislative veto provision (123 Cong. Rec. 9348 (Mar. 29, 1977)).

[5] 123 Cong. Rec. 9363, 9365 (Mar. 29, 1977). The proposed amendment purported to limit the relief which a court might grant to holding only the reorganization plan before it unconstitutional, rather than all plans adopted under the Act.

there would be "no question whatsoever that [Congress] intend[ed] that a single house of the Congress would have the authority at any given time to vote to disapprove a single plan of the president."[6] In light of this history, which the Jurisdictional Statement does not dispute, "[v]oiding the one-house veto as unconstitutional while leaving presidential authority [under this Act] intact would increase the President's power . . . far beyond the intention of Congress," *McCorkle* v. *United States*, 559 F. 2d 1258, 1262 (4th Cir. 1977), *cert. denied*, 434 U. S. 1011 (1978). The District Court correctly concluded that "the one-house veto provision was enacted as an integral and inseparable part of the entire Act" (J.S. App. 13a) which rendered the Act, as well as presidential action taken pursuant thereto, invalid.

2. The EEOC argues that the legislative veto in this case is less constitutionally offensive than that in *Chadha* because neither House of Congress exercised its veto power with respect to Reorganization Plan No. 1. Congressional silence, it contends, "may be taken as approval of the Executive action involved." J.S. 10. This argument was expressly rejected in *Chadha*. As this Court made clear, "[t]o allow Congress to evade the strictures of the Constitution and in effect enact Executive proposals into law by mere silence cannot be squared with Art[icle] I." *Chadha*, 51 U. S. L. W. at 4918, n. 22.

The same answer applies to the various other ingenuous arguments that the EEOC invokes to validate Reorganization Plan No. 1—the resolutions of disapproval procedure incorporated into the Reorganization Act; the provision in the Reorganization Act that, absent a veto, a plan would be "effective;" the printing of a plan in the Statutes at Large; and the exercise of authority here by the President rather than a subordinate representative of the Executive. J.S. 11-13. None of these contentions can withstand post-*Chadha* constitutional scrutiny. Affirmative bicameral action and presentment are

[6] 123 Cong. Rec. 9364 (Mar. 29, 1977) (remarks of Congresswoman Jordan).

constitutional requirements which the Framers deemed essential "to protect the people from the improvident exercise of power by mandating certain prescribed steps." *Chadha,* 51 U. S. L. W. at 4918. "The[se] explicit prescription[s] for legislative action contained in Art[icle] I cannot be amended by legislation." *Id.* at 4918, n. 22.[7]

3. The EEOC's argument that the subsequent appropriation of funds to the EEOC to enforce the Equal Pay Act constitutes "explicit ratification" of the transfer of authority to the Commission (J.S. 13) similarly disregards the admonition of *Chadha* that the legislative steps outlined in Article I "are not empty formalities." 51 U. S. L. W. at 4918, n. 22. Such action cannot substitute for an explicit transfer of enforcement authority through affirmative legislation by both Houses of Congress.[8] Initially, "there is more than a passing distinction between substantive legislation and appropriation bills." *Pacific Legal Foundation* v. *Goyen,* 664 F. 2d 1221, 1226 (4th Cir. 1981). Moreover, in "voting on appropriation measures, legislators are

[7] Nor can the strictures of Article I be amended or avoided by Executive action. The EEOC nonetheless argues that because the Reorganization Plan was an action of the President, rather than a subordinate Executive officer, "special stature and finality [should be accorded to the] completed reorganization plan." J.S. 12. The short answer to this argument is that an Executive action taken pursuant to a purported delegation of legislative authority is judged not by who takes the action, but rather by the constitutionality of the delegation of power. Since *Marbury* v. *Madison,* 1 Cranch 137 (1803), the principle has been well-settled that it is this Court, not the Executive, which sits in judgment on the constitutionality of that delegation.

[8] Indicative of the EEOC's disregard of this principle is its reliance upon post-*Chadha* appropriations "to remove any doubt about whether Congress intends for the Commission to enforce the Equal Pay Act despite the latent legislative veto defect in the Reorganization Act." J.S. 14. That argument is clearly specious. Congressional refusal to comply with *Chadha,* whether in appropriation bills or otherwise (see Tolchin, *In Spite of the Court, the Legislative Veto Lives On,* N. Y. Times, Dec. 21, 1983, at 14, col. 3), cannot infuse constitutional validity to otherwise infirm legislation.

entitled to operate under the assumption that the funds will be devoted to purposes which are lawful." *Tennessee Valley Authority* v. *Hill*, 437 U. S. 153, 190 (1978). The mere appropriation of funds for the EEOC thus begs the underlying question of whether Congress, in fact, legislated lawfully. And finally, the EEOC's ratification argument contravenes the requirement of *Chrysler Corp.* v. *Brown*, 441 U. S. 281 (1979), that there must be a sufficient "nexus" between Executive action and a "*statutory* grant of authority" so that a reviewing court can "reasonably be able to conclude that the grant of authority contemplate[d]" the action in question. *Id.* at 304, 306, 308. No such "nexus" can be found between the Reorganization Plan and any of the subsequent statutory enactments which the EEOC argues have "ratified" the President's delegated authority under the Reorganization Act. In the absence of such a "nexus" the Reorganization Plan could not have been "enacted" pursuant to a constitutional delegation of legislative authority.[9]

4. Contrary to the position of the EEOC (J.S. 15-16), the court below, in determining that its decision should be applied retroactively (J.S. App. 14a-17a), properly applied the three-prong test of *Chevron Oil* v. *Huson*, 458 U. S. 50 (1982). While all three of the considerations enunciated in that case "must be

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[9] While in *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297 (1937), and *Isbrandtsen-Moller Co.* v. *United States*, 300 U. S. 139 (1937), cited by the EEOC (J.S. 13 and n. 7), the enactment of a subsequent lawful statute constituted sufficient ratification of a prior unauthorized transfer of agency authority, in both decisions the subsequent lawful statute expressly stated that "the functions of the former Shipping Board are referred to as 'now vested in the Department of Commerce.'" *Isbrandtsen-Moller*, 300 U. S. at 148. In contrast, neither the appropriation bills nor Congress' passing reference in the Civil Service Reform Act to Reorganization Plan No. 1, contains any explicit validation of the prior unlawful Reorganization Act. *Fleming* v. *Mohawk*, 331 U.S. 111 (1947), also cited by the EEOC (J.S. 13 n. 7) is similarly inapposite since in *Fleming*, unlike here, an already existing statute was construed to grant the President authority for his actions.

shown to favor prospective-only application before a decision will be denied retroactive effect" (*Valencia* v. *Anderson Bros. Ford*, 617 F. 2d 1278, 1289 (7th Cir. 1980)), none of those factors favors prospective-only application in this case.

First, the invalidity of the one-house legislative veto was "clearly foreshadowed" at the time the President purported to transfer Equal Pay Act enforcement authority to the EEOC. The Reorganization Act was passed by a Congress well aware that the one-house veto raised grave constitutional doubts. Thus, the EEOC's reliance on the fact that the purported transfer of authority pre-dated this Court's decision in *Chadha* is misplaced. Indeed, the retroactive application given to this Court's holding in *Chadha* repudiates the contention that the unconstitutionality of the one-house veto was not "clearly foreshadowed."

Second, retroactive application in this case will further *Chadha*'s holding that one-house legislative veto provisions violate the most fundamental principles of the Constitution. Absent retroactive application, as the District Court noted (J.S. App. 16a), the EEOC will be encouraged "to pursue other similar suits in spite of its lack of a constitutionally sound grant of statutory authority to do so." Only retroactive application can effectively force Congress to confront the issue of providing the EEOC with constitutional authority to enforce the Equal Pay Act.[10]

Third, retroactive application will not produce the "manifestly inequitable results" feared by the EEOC. J.S. 16. As noted by the District Court, "[t]he Equal Pay Act includes a

[10] Retroactive application is particularly important in light of both the evidence that Congress has virtually ignored this Court's denouncement of the one-house legislative veto device in *Chadha* (see Tolchin, *In Spite of the Court, the Legislative Veto Lives On*, N. Y. Times, Dec. 21, 1983, at 14, col. 3) and the EEOC's uninterrupted role in performing the functions impermissibly delegated to that agency by Reorganization Plan No. 1 (see note 2, *supra*).

provision for individuals to sue in their own right." J.S. App. 16a. Moreover, despite its awareness of the potential constitutional infirmity underlying its enforcement authority, the EEOC has taken no action since *Chadha* to obtain either express legislative authority to enforce the Equal Pay Act or the cooperation of the Secretary of Labor.[11] Instead the Commission has devoted its resources to subverting the very "public interest in administrative stability" (J.S. 16) about which it now expresses concern by administering the Equal Pay Act as if the decision below did not exist.[12] The EEOC should not be heard to complain of any "inequity" which may result from its own chosen course.

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[11] One possible solution to the EEOC's feared "disrupt[ion]" of "a substantial number of pending cases" (J.S. 16) could be that suggested by *EEOC* v. *Pan American World Airways*, No. M18-304 (S. D. N. Y. Oct. 26, 1983), in which the court ruled that, because of its doubt as to the validity of the EEOC's enforcement authority, it would not enforce an EEOC subpoena in an ADEA investigation unless the subpoena was co-signed by the Secretary of Labor. The EEOC has refused to adopt such a procedure, or take any other similar action, on its own.

[12] See note 2, *supra*.

CONCLUSION

For the foregoing reasons, this Court should exercise its jurisdiction under 28 U. S. C. 1252 and affirm the judgment of the District Court.

Respectfully submitted,

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APPENDIX A

Tolchin, *In Spite of the Court, the Legislative Veto Lives On*, N.Y. Times, Dec. 21, 1983, at 14, col. 3.

By MARTIN TOLCHIN
Special to The New York Times

WASHINGTON, Dec. 20 — The legislative veto is alive and well, contrary to a Supreme Court decision and a raft of obituaries.

It continues to thrive in a number of laws recently passed by Congress and signed by President Reagan. The laws may be legally questionable, experts say, but the fact is that the two branches of Government have found agreement on the need for such statutes in certain instances.

"It's like the Queen Mary," said Stanley M. Brand, former counsel to the clerk of the House of Representatives. "You can't turn it around that quickly."

A legislative veto is a 50-year-old device that allows one or both houses of Congress, or even a committee, to block an action of the President or an administrative agency. The veto was held unconstitutional last June when the Supreme Court ruled that it constituted an unwarranted Congressional intrusion into the powers of the executive branch.

Justice Powell's Comment

There were 120 vetoes on the books at the time. Associate Justice Lewis F. Powell Jr. said that the decision, I.N.S. v. Chadha, "apparently will invalidate every use of the legislative veto" and that "the breadth of this holding gives one pause."

Since the Supreme Court decision, several laws containing legislative vetoes have been enacted, including the following:

The appropriations bill for the Department of Housing and Urban Development and independent agencies gained final Congressional approval six days after the decision, on June 23, and was signed into law on July 12.

It held, among other things, that construction grants by the Environmental Protection Agency were subject to prior committee approval; that the National Aeoronautical and Space Administration needed committee approval before authorizing the leasing or construction of facilities, and that the Federal Home Loan Bank Board needed committee approval before transferring earmarked expenses.

The supplemental appropriations bill, signed on July 30, provided that committee approval was required before certain funds could be paid by the Army Corps of Engineers or before the Interior Department could terminate certain programs.

The Caribbean Basin Economic Recovery Act, signed on Aug. 5, provided that the President could suspend duty-free treatment and proclaim a special duty rate for Caribbean nations, subject to a Congressional veto.

The appropriations bill for the Trnasportation Department, signed Aug. 15, provided that expenditure of funds for Washington's Union Station needed prior Congressional approval, as did certain actions of the Federal Aviation Administration.

A stopgap spending bill approved last October provided that committee approval was required before the Administration could transfer foreign assistance funds from one category to another. Without such a provision, the Administration would be required to obtain full Congressional approval for such a transfer.

Before the Supreme Court decision, legislative vetoes were often opposed by the White House. Those enacted since have been the result of compromises, usually involving how various sums of money are to be spent.

Presidential Disclaimers

Administration officials say the President signed many of the new bills with disclaimers concerning legislative vetoes. Should there ever be a showdown with a committee, they say, the Administration would not feel bound by the legislative veto provisions. However, the officials concede that because Administration agencies will have to return to Congressional committees to seek funds in future years, the agencies have generally been respectful of committee opinions, whether or not they have the force of law.

The Reagan Administration has no intention of testing such legislation, so long as the compromises hold up, according to Administration officials. Private citizens and organizations may react differently, however.

Last week, arguments were heard in Federal District Court here in a case involving a legislative veto invoked last August by the House Interior Committee. The committee approved a resolution that sought to block the Interior Department from signing a coal-leasing agreement for Federal lands in Montana and North Dakota. Last October, the President signed a stopgap spending bill that incorporated the resolution.

'Are They Constitutional?'

The lawsuit was brought by the National Wildlife Federation and the Wilderness Society, which want to stop the lease sale.

"It may come as a surprise to some observers in town that Congress has continued to enact legislative vetoes after the Chadha decision," said Louis Fisher, a specialist in the Government division of the Congressional Research Service of the Library of Congress, who has written extensively about the legislative veto.

"Are they unconstitutional?" Mr. Fisher asked rehetorically of the post-Chadha legislative vetoes. "By the court's definition they are. Will this change the behavior between committees and agencies? Probably not."

Mr. Fisher predicts that the agencies will, in effect, tell Congress, "As you know, this law is unconstitutional." Then, after everyone agrees, they will all abide by the new law.

"It makes sense for both branches," Mr. Fisher added. "It's a web of understandings and relationships that goes back decades. The legislative veto gives the President a fast track. Without access to the legislative veto, why should members of Congress want to grant a fast-track process to the President?"